instruction and employed the machinery of the compulsory education laws to afford sectarian groups an invaluable aid.

The Court found that the use of tax-supported property for religious instruction aided sectarian groups and, therefore, was unconstitutional. Shortly following was the case of *Zorach v. Clauson*, 343 U.S. 306, which upheld a "released-time" program in which religious instruction was provided off the school premises. The Court, in its opinion, held that the encouragement of religious education when public property was not in use did not violate the First Amendment to the Constitution, but, rather, was a furtherance of our tradition of being a religious people. It is most respectfully submitted that a close analysis of the cases dealing with religious education show that nowhere is the State prohibited from determining qualifications of those who hold public office, even if those qualifications include a belief in the existence of God.

The Appellant claims that a requirement of belief in the existence of God prefers some religions over others, specifically theistic religions over those which are non-theistic. However, the very word "religion" as set forth in the Constitution of the United States and as defined by the decisions of this Court clearly will show that non-theism is not a religion as contended.

> "The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to His will. * * *". *Davis v. Beason, supra.* See also *United States v. Ballard*, 322 U.S. 78.
>
> "The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation." Mr. Chief Justice Hughes' dissenting opinion, *United States v. Macintosh, supra.*

QUERY: Was it the intent of the framers of the First Amendment that the existence of a Supreme Being should be negated and that a state recognition of God should be suppressed?

"* * * An attempt to level all religions, and to make it a matter of State policy to hold all in utter indifference would have created universal disappropriation, if not universal indignation." Story, *Commentaries on the Constitution*, Sec. 1874 (1833); citing 2 Lloyds Debates, 195, 196.

"By establishment of religion is meant the setting up or recognition of a state church, or at least conferring upon one church of special favors and advantages which are denied to others. * * * It was never intended by the Constitution that the Government should be prohibited from recognizing religion, * * * where it might be done without dragging any invidious distinctions between religious beliefs, organizations or sects." Cooley, *Principles of Constitutional Law*, 3rd Ed., 224-225 (1898).

See also:

Cooley, *Constitutional Limitations*, 8th ed., pp. 974-976 (1927).

It is respectfully submitted that the First Amendment was never conceived to negate a belief in the existence of a Supreme Being or to suppress state recognition in the existence of God. Governmental institutions, executive, legislative and judicial, all contemporaneously recognize and manifest a belief in the existence of a Supreme Being.

II.

The Appellant Has Not Been Denied Due Process of Law or Equal Protection of the Law as Guaranteed by the Fourteenth Amendment to the United States Constitution.

The Appellant claims that he has been denied due process of law and equal protection of the law in violation of the Fourteenth Amendment. He states that his inability

to qualify as a Notary Public denies equal protection of the laws and bars the State from granting said privilege to some while it withholds it from others. In *Garner v. Board of Public Works*, *supra*, this Court reiterated that the qualifications for state office were properly within the purview of the states. The Constitution of the United States did not guarantee public employment or office-holding. See also *Gerende v. Board of Supervisors of Elections*, *supra*; and *Slochower v. Board of Education*, *supra*. In *Taylor v. Beckham*, 178 U.S. 548, *supra*, this Court refused to assume jurisdiction to review a determination of state courts relative to the election of the Governor and Lieutenant-Governor of the State of Kentucky. The Court stated that the offices of Governor and Lieutenant-Governor of the State of Kentucky were not property or any other right which was protected by the Fourteenth Amendment to the Constitution. This Court in *Snowden v. Hughes*, 321 U.S. 1, in reviewing the rights of certain candidates to state office, held that such is a right or privilege of state citizenship and not of national citizenship, which is protected by the "Privileges and Immunities Clause". The Court concluded:

> "More than forty years ago this Court determined that an unlawful denial by state action of a right to state political office is not a denial of a right of property or of liberty secured by the due process clause. *Taylor & Marshall v. Beckham*, 178 U.S. 548, 44 L. ed. 1187, 20 S. Ct. 890, 1009. Only once since has this Court had occasion to consider the question and it then reaffirmed that conclusion, *Cave v. Missouri*, 246 U.S. 650, 62 L. ed. 921, 38 S. Ct. 334, as we reaffirm it now."

See also:

Hamilton v. University of California, *supra*.

The Appellant further contends that the requirement of a belief in the existence of God is unreasonable. This

argument falls by its own weight. As heretofore set forth, our national institutions which set forth the will and traditions of the nation clearly are based upon a reliance in the existence of God. To destroy or to judicially breach the customs and traditions of our people would in itself be unreasonable. The State of Maryland, as well as the other states of the union, may, through their collective voices, speak for a declaration in the existence of God.

As pointed out in the opinion of the Court of Appeals of Maryland, it would appear to be somewhat paradoxical if a Notary Public, who is given the power to administer oaths and certify thereto (Article 68, Section 3 of the Maryland Code, (1957 Ed.)), might qualify for this office where he disavows a belief in God and in the sanctity of the very oath he administers.

The public policy of the people of Maryland, as set forth in the Preamble to the Constitution of the State of Maryland, states:

> "We, the people of the State of Maryland, grateful to Almighty God for our civil and religious liberty, and taking into our serious consideration the best means of establishing a good Constitution in this State with a sure foundation and more permanent security thereof, declare: * * *"

The public policy of religious belief is further pointed out by the marriage laws of Maryland, which by Article 62, Section 4 of the Maryland Code (1957 Ed.) provide that marriages may be solemnized in the State of Maryland by any minister of the gospel or official of a religious order or body, and it has been held that no marriage in the State of Maryland is valid without some sort of religious ceremony. See *Feehley v. Feehley*, 129 Md. 565, 99 A. 663; *Dennison v. Dennison*, 35 Md. 361; *Hender-*

son v. Henderson, 199 Md. 449, 87 A. 2d 403. Likewise, since our earliest history blasphemy has been made a crime (Article 27, Section 20, Code of Maryland, 1957 Ed.).

Can it be claimed that the public policy of the people of Maryland is unreasonable in requiring an oath of our public officers which reflects the public desire of a belief in the existence of God? If the Appellant's arguments are correct, any recognition by the State or National Government of the existence of God would violate the First Amendment to the Constitution. It is respectfully submitted that this interpretation was never intended by the founding fathers and that such interpretation would meet with universal indignation from the citizens of this nation.

III.

Article 37 of the Declaration of Rights of the Maryland Constitution Does Not Violate the Provisions of Article 6 of the Constitution of the United States.

Article 6, Clause 3, of the United States Constitution states that "* * * No religious test shall ever be required as a qualification to any office or public trust under the United States". The argument that this provision applies to the States was abandoned in the Court of Appeals of Maryland and, as held in the opinion of the Court of Appeals, it was not contended that Clause 3 of Article 6 of the Constitution was applicable to the states; nor, was it contended that this Article was part of the Fourteenth Amendment to the Federal Constitution. Since the matter was not passed upon by the Court of Appeals of Maryland and not ruled upon by that Court, it would be improper for this Court for the first time to rule on this contention. *Adler v. Board of Education*, 342 U.S. 485; *Alabama State Federation of Labor v. McAdory*, 325 U.S. 450; *Nelson v. County of Los Angeles*, 362 U.S. 1.

The Appellant urges that the provisions of Article 6 Section 3 of the United States Constitution above referred to are applicable to the several states. This argument must fall by its own weight since the prohibition expressly applies only to offices held under the National Government. Its purpose was to cut off forever any pretense of alliance between any church and the National Government. The preceding clause of Section 3 of Article 6 requires that all legislative, executive and judicial officers of both the United States and of the several states are required to be bound by an oath or affirmation to support the Constitution of the United States, but the provision as to religious test applies only to any office of public trust under the United States. *Expressio unius est exclusio alterius.* If the framers of the Constitution had intended to have this clause apply to state officers, it would have used the language contained in the first clause of Section 3, *supra*.

CONCLUSION

It is respectfully submitted that the provisions of the Maryland Declaration of Rights now under attack in this Court are so fundamental to the beliefs of the State of Maryland, as well as to the nation as a whole, that any decision which would negate the recognition of the existence of God by public officers would create universal indignation. It is therefore respectfully submitted that the opinion of the Court of Appeals of Maryland should be affirmed.

Respectfully submitted,

THOMAS B. FINAN,
Attorney General,
JOSEPH S. KAUFMAN,
Deputy Attorney General,
For Appellee.